

**Paper for the House Committee Meeting
of the Legislative Council
on 13 November 1998**

**Legal Service Division Report on
Adaptation of Laws (No. 6) Bill 1998**

Object of the Bill

To adapt certain Ordinances and their subsidiary legislation to bring them into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China.

LegCo Brief Reference

2. FIN CR 1/3221/91 issued by the Finance Bureau in October 1998.

Date of First Reading

3. 11 November 1998.

Comments

4. A list of the Ordinances affected by these amendments and a summary of the proposed amendments on terminology in the Bill are at Annexes A and B respectively. The Ordinances set out at Annex A mainly deal with tax matters. As for some other miscellaneous amendments that may not be purely textual amendments, they are listed in Annex C.

5. According to the Administration, the Bill does not seek to introduce any change in policy. The proposed amendments are essentially technical drafting changes to individual Ordinances.

6. If enacted, the Bill will take retrospective effect from 1 July 1997 to ensure that there is consistency in the interpretation of all laws on and after 1 July 1997. The retrospective effect will not apply to provisions involving criminal offences or penalties.

Public Consultation

7. There has not been any public consultation on the Bill.

Consultation with the LegCo Panel

8. No consultation with any LegCo Panel on the details of the Bill has been carried out.

Conclusion

9. There are technical points which the Legal Service Division is seeking clarification from the Administration. Also, the proposed amendments listed in Annex C may not be purely textual amendments. Members may wish to consider these proposed changes in detail in a Bills Committee.

Encls.

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List of Ordinances affected by the Adaptation of Laws (No. 6) Bill 1998

Item No.	Ordinances
1.	Betting Duty Ordinance and its subsidiary legislation (Cap. 108)
2.	Dutiable Commodities Ordinance and its subsidiary legislation (Cap. 109)
3.	Estate Duty Ordinance and its subsidiary legislation (Cap. 111)
4.	Inland Revenue Ordinance (Cap. 112)
5.	Rating Ordinance (Cap. 116)
6.	Stamp Duty Ordinance (Cap. 117)
7.	Air Passenger Departure Tax Ordinance (Cap. 140)
8.	Cross-Harbour Tunnel (Passage Tax) Ordinance (Cap. 274)
9.	Tax Reserve Certificates Ordinance (Cap. 289)
10.	Business Registration Ordinance (Cap. 310)
11.	Motor Vehicles (First Registration Tax) Ordinance (Cap. 330)
12.	Hotel Accommodation Tax Ordinance (Cap. 348)

Adaptation of Laws (No. 6) Bill 1998
Summary of the proposed amendments on terminology

Original Terms	Proposed Amendments
Royal Hong Kong Jockey Club	Hong Kong Jockey Club
立法局	立法會
Governor/Governor in Council	Chief Executive/ Chief Executive in Council
Colony	Hong Kong
Crown ¹	Government
香港海關總監	關長
against the enemy ²	against a state then at war with the United Kingdom
His Majesty ²	the United Kingdom
Hong Kong Government	The Government of the Hong Kong Special Administrative Region
外地 ³	香港以外的地方
Crown lease ⁴	Government lease

NOTES

¹ References to "Crown" are made in Regulation 5 of the Betting Duty Regulation (Cap. 108) (i.e. item 7 of Sch. 1 in the Bill), various sections of the Stamp Duty Ordinance (Cap. 117) (i.e. various items of Sch. 6), sections 8, 9(1) and 18(3) of the Air Passenger Departure Tax Ordinance (Cap. 140) (i.e. items 2, 3 and 5 of Sch. 7), section 5(7) and paragraph 3 of the Second Schedule of the Cross Harbour Tunnel (Passage Tax) Ordinance (Cap. 274) (i.e. items 4 and 5 of Sch. 8) and section 3 of the Hotel Accommodation Tax Ordinance (Cap. 348) (i.e. item 1 of Sch. 12). They stipulate that any duty or tax not paid shall now be recoverable as a debt to the "government" and not to the "Crown". Some other references relate to goods forfeited shall be to the "government" and no longer to the "Crown". Such adaptations are found in sections 28A and 52 of the Dutiable Commodities Ordinance (Cap. 109) (i.e. items 23 and 43 of Schedule 2).

² See item 2(a) of Schedule 3 which amends section 21(a) of the Estate Duty Ordinance (Cap. 111).

³ See item 7 and 8 of Schedule 4 which amends sections 23C(4)(a) and 23D(7)(a) of the Inland Revenue Ordinance (Cap. 112).

⁴ See item 11(b)(ii) of Schedule 6 which amends section 39 of the Stamp Duty Ordinance (Cap. 117).

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**Miscellaneous Provisions repealed or amended that
may not be purely textual amendments**

Item No.	Ordinance and Section	Repealed Provision	Amended Provision
126 of Schedule 2	Dutiable Commodities Ordinance, sub. leg.	Resolutions of the Legislative Council (L.N. 140 of 1964 and L.N. 113 of 1978) ¹ .	
3 of Schedule 4	Inland Revenue Ordinance, s.4(4)(b)	The Commissioner may communicate any matter which comes to his knowledge.... <u>“to the income tax authority of any part of the Commonwealth to such extent as the Commissioner may deem necessary²....”</u> .	
5 of Schedule 4	Inland Revenue Ordinance, s.8(2)(h)	In computing the income of any person for the purposes of subsection (1) there shall be excluded the following: “(h) the emoluments payable by the Government of the United Kingdom to persons in the temporary service of that Government who are in the opinion of the Commissioner serving in Hong Kong on United Kingdom based terms.....”	In computing the income of any person for the purposes of subsection (1) there shall be excluded the following: “(h) the emoluments payable by the Central People’s Government to persons in the temporary service of that Government who are in the opinion of the Commissioner serving in Hong Kong on Mainland of China based terms”

10 of Schedule 4	Inland Revenue Ordinance, s.39E(5)	in the definition of “operator of a Hong Kong aircraft”, it means a person who holds an air operators’ certificate issued under the <u>Air Navigation (Overseas Territories) Order 1977 (App.III, p.DP1) by the Governor of Hong Kong</u> ^{3”}	Air Navigation (Hong Kong) Order 1995 (L.N. 561 of 1995).
11 of Schedule 4	Inland Revenue Ordinance, s.46	A provision on official secrecy ² .	
13 of Schedule 4	Inland Revenue Ordinance, s.63A	A provision on appointment of agent in the United Kingdom ⁴ .	
12 of Schedule 6	Stamp Duty Ordinance, s.41(1)	Notwithstanding section 4(3), the Government or any incorporated public officershall not be liable for the payment of stamp duty chargeable on any instrument or any penalty payable in respect thereof under section 9.	Notwithstanding section 4(3), the Central People’s Government, the Government or any incorporated public officershall not be liable for the payment of stamp duty chargeable on any instrument or any penalty payable in respect thereof under section 9.
13 of Schedule 6	Stamp Duty Ordinance, s.42(1)	<p>42. Relief in case of certain leases etc. to Government</p> <p>(1) This section applies to a lease or agreement for a lease (other than an instrument to which section 39 applies) made between-</p> <p>(a) the Government, or any person acting on behalf of the Government;</p>	<p>42. Relief in case of certain leases etc. to Government</p> <p>(1) This section applies to a lease or agreement for a lease (other than an instrument to which section 39 applies) made between-</p> <p>“(aa) The Central People’s Government, or any person acting on behalf of the Central People’s Government”.</p> <p>(a) the Government, or any person acting on behalf of the Government.”</p>

14 of Schedule 6	Stamp Duty Ordinance, s.43(2)	<p>43. Relief in case of certain leases etc. of consular premises</p> <p>(2) Every lease or agreement for a lease (other than an instrument to which section 39 applies) made in respect of exempted premises between an exempted person, or a person acting on behalf of an exempted person, and any other person (other than the Government, an incorporated public officer or an exempted person) shall be deemed to contain a provision whereby such other person undertakes to pay 50 per cent of the stamp duty chargeable on such instrument; and payment of that amount under a provision deemed by virtue of this subsection to be contained in an instrument shall be deemed to constitute payment of the stamp duty chargeable on the instrument.</p>	<p>43. Relief in case of certain leases etc. of consular premises</p> <p>(2) Every lease or agreement for a lease (other than an instrument to which section 39 applies) made in respect of exempted premises between an exempted person, or a person acting on behalf of an exempted person, and any other person (other than the Central People's Government, the Government, an incorporated public officer or an exempted person) shall be deemed to contain a provision whereby such other person undertakes to pay 50 per cent of the stamp duty chargeable on such instrument; and payment of that amount under a provision deemed by virtue of this subsection to be contained in an instrument shall be deemed to constitute payment of the stamp duty chargeable on the instrument.</p>
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Notes

- 1 This resolution states that the duty payable on rum issued to Gurkha troops in Hong Kong is remitted until the resolution is revoked. The Administration takes the opportunity to revoke this resolution.
- 2 According to Para. 5 of the LegCo Brief, it is stated that together with section 46, such provisions deal with matters relating to the income tax of the Commonwealth and these provisions are no longer applicable.
- 3 Such Order has already been adapted. See also item 17 to Schedule 1 of the Adaptation of Laws (Nationality Related Matters) Ordinance (No. 28 of 1998).
- 4 The Administration states in para. 5 of the LegCo Brief that such provision is no longer applicable.